IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.4020 of 2006
Date of Order : 19/11/2007

Hazari Lal Versus Raj Kapoor and another.

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Shri S.P.Chahal, Advocate for the appellant.
Shri Saurabh Dalal, Advocate for respondent No.1.

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R.S.A.No.4291 of 2006
Date of Order : 19/11/2007

Raj Kapoor Versus Hazari Lal and another.

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Shri Saurabh Dalal, Advocate for the appellant.
Shri S.P.Chahal, Advocate for respondent No.1.

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J U D G M E N T

HEMANT GUPTA, J.

This order shall dispose of R.S.A.No.4020 of 2006, filed by the plaintiff and R.S.A.No.4291 of 2006 filed by defendant No.1 challenging the findings recorded by the Courts below on Issue Nos.4 & 7.

The plaintiff claimed declaration in respect of ownership and possession of the half share of the plot No.787 by way of natural succession and another half share by virtue of purchase for a consideration of Rs.500/- in the year 1965 from another co-sharer. It is the case of the plaintiff that defendant No.2 had sold some land to defendant No.1 vide sale deed dated 2.5.1991 and that part of the sale is in respect of plot No.787. The defendant No.1 denied the claim of the plaintiff in respect of the aforesaid

plot and alleged that defendant No.2 was actually in possession of the disputed property and he transferred all his rights in the aforesaid plot in favour of defendant No.1 by executing a sale deed dated 2.5.1991.

Issue No.4 was "whether the suit is barred by the principles of resjudicata?", whereas Issue No.7 was "whether the suit is liable to be dismissed for want of Court fee?". The findings on the said Issues have been answered against the defendants, whereas Issue No.1 "whether the plaintiff was owner and in possession of the half share of the plot No.787 and whether he has purchased the remaining half share by way of oral purchase for a consideration of Rs.500/- in the year 1965 from other co-sharer", was decided against the plaintiff. It was found that the plaintiff has not led any evidence to show that the plot No.787 was purchased by him. It was found that though in the pre-emption suit, the defendant has alleged that the land sold is part of Khasra No.787, but it does not lead inference that the land in dispute is now part of Khasra No.787. In fact, it was found that from the sale deed dated 2.5.1991, it is apparent that the land sold was not part of Khasra No.787. It is for the plaintiff to prove and link the suit land with Khasra No.787, but no document has been produced by the plaintiff to prove and to link the suit land as part of Khasra no.787.

The finding recorded by the Courts below that the plaintiff has not led any evidence to prove that the suit land is part of Khasra No.787 is sought to be disputed by re-appreciation of evidence. No evidence has been led by the plaintiff nor any document has been produced to show that the suit land bears Khasra No.787. The plaintiff has failed to prove his ownership over Khasra No.787. The findings on Issue Nos.4 and 7 i.e. in respect of "resjudicata" and "Court fee" are not material keeping in view

the findings on Issue No.1.

In view of the said fact, the findings recorded by the Courts below cannot be said to be suffering from any patent illegality or irregularity which may give rise to any substantial question of law for consideration of this Court in second appeal. Consequently, both the appeal are dismissed in limine.

(HEMANT GUPTA)
JUDGE

19/11/2007

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